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BNA's

# Patent, Trademark & Copyright Journal®

Volume 70 Number 1734

Friday, August 26, 2005

ISSN 1522-4325

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## News

### Patents/Claim Construction

#### Intrinsic Evidence Shows 'Clear' Means Only 'Transparent'; Does Not Cover 'Translucent'

The term "clear" for the plastic tubular holder in a claimed light emitting diode lamp excludes "translucent" holders like those in the patent infringement defendant's solar-powered pathway lamps, the U.S. Court of Appeals for the Federal Circuit ruled Aug. 16 (*Terlep v. Brinkmann Corp.*, Fed. Cir., No. 04-1337, 8/16/05).

Upholding a federal district court's interpretation of this key claim term, and affirming a summary judgment of noninfringement, the court rejected a dictionary-based argument that "transparent" and "translucent" could be synonyms.

#### 360-Degree Signaling Lamp Patented

Stephen K. Terlep holds a patent (5,594,433) relating to an "omni-directional light emitting diode" lamp. The lamp, with no rotating parts, can be used to emit light in all directions, serving for traffic and warning purposes. Terlep sued Brinkmann Corp., alleging that its solar-powered pathway lamps infringed the '433 patent.

Claim 1 of the patent requires that the patented lamp include a "clear plastic tubular holder for tightly holding [a] ... semi-spherical reflector."

Judge Harry F. Barnes of the U.S. District Court for the Western District of Arkansas ruled that the term "clear" should be construed to mean only "transparent" and not "translucent." The holder or covering of the Brinkmann lamp was ribbed and, as a result, not transparent, and thus not within the claim, the district court concluded.

Brinkmann moved for summary judgment of noninfringement, which the district court granted. Terlep appealed.

#### Intrinsic Evidence Excludes Diffusion

Judge Richard Linn addressed Terlep's argument that "clear" should be read to include translucent holders because the patent requires the holder to be clear only to the extent that it allows light through.

However, the court said that the background and prior art sections of the patent note that previous inventions of this type were less effective because of covers that diffused the light, as translucent substances do. The court said:

Implicit in these passages is the distinction between lenses or holders that diffuse or scatter light and those that transmit light without obstruction. The written description is thus consistent with and supports the district court's construction of the term "clear" to refer to holders that are "transparent or [have] the property of transmitting light without appreciable scattering so that bodies lying beyond are seen clearly."

The court also referenced the prosecution history, which showed that the lack of diffusion resulting from a clear holder served to distinguish the patented invention from prior art.

The court rejected a dictionary-based argument that "transparent" and "translucent" could be synonyms. The dictionary definitions themselves revealed differences in meaning between the two, the court said.

Finally, the court rejected the argument that such a construction of a solely structure-related limitation served to "import a functional limitation into the claim."

According to the court, "[t]he construction properly adopted by the district court merely assigned meaning to the claim term 'clear' and did not impermissibly import a functional limitation."

### Infringement

Applying that claim construction, the Federal Circuit agreed with the district court that there was no infringement.

The court discounted Terlep's observation that some of Brinkmann's products has a translucent cover. None of them has a translucent *holder*, the court stressed, affirming the summary judgment of no literal infringement.

The court similarly turned back Terlep's argument that there was infringement under the doctrine of equivalents. It noted that the "clear" language was part of an amendment that narrowed the scope of the original patent application, thereby surrendering the broader claim scope for purposes of asserting equivalents infringement.

Terlep was represented by Nathan Price Chaney of Nolan Henry, Fayetteville, Ark. Brinkmann was represented by Gary A. Clark of Shepard, Mullin, Richter & Hampton, Los Angeles.

 Full text at <http://pub.bna.com/ptcj/041337Aug16.pdf>. 

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ISSN 1522-4325

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